



**THE ATTORNEY GENERAL  
OF TEXAS**

**AUSTIN, TEXAS 78711**

**CRAWFORD C. MARTIN  
ATTORNEY GENERAL**

April 3, 1972

Honorable Robert S. Calvert  
Comptroller of Public Accounts  
State of Texas  
Austin, Texas 78711

Opinion No. M-1112

Re: Payment by the State for  
licensure of nursing home  
administrators.

Dear Mr. Calvert:

Your request for an opinion asks the following questions:

"(1) Can the State pay for the licensure of  
nursing home administrators?

"(2) Can the State pay the renewal fee?"

Article 4442d, Vernon's Civil Statutes, provides for  
licensing of Texas nursing home administrators and prescribes  
license fees and renewal fees.

Section 1396 of Subchapter XIX of the Social Security  
Act (42 U.S.C.A. §1396) provides for medical assistance grant  
payments to states and provides in part:

". . . The sums made available under this  
section shall be used for making payments to  
States which have submitted, and had approved  
by the Secretary of Health, Education and Welfare,  
State plans for medical assistance."

Section 1396a provides in part:

"(a) A State plan for medical assistance  
must --

". . .

"(29) include a State program which meets the  
requirements set forth in section 1396g of this  
title, for the licensing of administrators of  
nursing homes; . . ."

Section 1396g provides in part:

"(a) For purposes of section 1396a(a)(29) of this title, a 'State program for the licensing of administrators of nursing homes' is a program which provides that no nursing home within the State may operate except under the supervision of an administrator licensed in the manner provided in this section."

The provisions of Article 4442d, Vernon's Civil Statutes, meet the requirements of Subdivision (a) of 42 U.S.C.A. §1396g, above quoted.

In view of the foregoing the Secretary of Health, Education and Welfare has required the Texas Department of Mental Health and Mental Retardation to have a licensed nursing home administrator to supervise each of its State schools in order to receive moneys provided in 42 U.S.C.A. §1396, above quoted.

In order for the Department to receive moneys from Subchapter XIX of the Social Security Act for the care it affords eligible individuals at its State schools for mentally retarded, the Department has requested certain individuals to qualify as a licensed nursing home administrator. The Department seeks to pay the license fees out of Item 19 of the appropriation to the Department of Mental Health and Mental Retardation, an appropriation made "to defray the costs of meeting and maintaining requirements of Medicare-Medicaid certification in institutions of the Texas Department of Mental Health and Mental Retardation."

Section 9 of Article 4442d, Vernon's Civil Statutes, provides the qualifications for an individual to receive a license as a nursing home administrator. Subdivision (3) of Section 10 provides:

"(3) Each person licensed as a nursing home administrator shall pay an initial license fee to be fixed by the board which shall not exceed \$100.00. Each license issued under this Act shall expire on June 30 of even-numbered years and may be renewable. Renewal licenses shall be issued biennially at a fee to be set by the board which shall not exceed \$100.00 for the biennium. Reasonable fees shall be set by the board for the issuance of copies of public records in its office as well as for certificates or transcripts and duplicates of lost instruments. Each applicant for examination and license shall accompany the

application with an examination fee of \$70.00, which shall not be refundable, for investigation, processing, and testing purposes."

In view of the provisions of Article 4442d above quoted, it is our opinion that the license fees provided for therein are for the purpose of receiving a license from the State to qualify as a licensed nursing home administrator and such fees constitute an expense of the individual seeking to qualify as a licensed nursing home administrator. Therefore such fees may not be paid by a State agency.

S U M M A R Y

License fees imposed by the provisions of Article 4442d, Vernon's Civil Statutes, for licensure of nursing home administrators may not be paid by a State agency.

Very truly yours,

  
CRAWFORD C. MARTIN  
Attorney General of Texas

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APPROVED:  
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